

## REMARKS

### *Objections*

Claims 14 and 15 have been amended to correct the informalities pointed out in the Office action. Reconsideration of the objection is requested.

### *Rejections*

#### ***102 rejections--Independent claims***

Claim 16 was rejected under 35 U.S.C. § 102(e) as being anticipated by Kenner. Amended claim 16 recites track a transmission as soon as a handle is provided to a first marker, and at any time after the handle is provided, call another method to obtain tracking information which is current as of the time the another method is called.

Kenner's test packet provides a round trip elapsed time. Therefore, information about the transmission of the test packet only becomes available upon completion of the round trip, *if* it was completed. As such, Kenner does not anticipate amended claim 16 or claims dependent thereon.

Independent claim 26 was also rejected under 35 U.S.C. § 102(e) as being anticipated by Kenner. Claim 26 has been amended to recite receiving a handle to a first marker that is set in a transmission, the transmission to be distributed to a plurality of receivers, and tracking the transmission after the first marker, the tracking on-going from the time the handle to the first marker is received.

Kenner tests response times for remote storage and retrieval units (SRU) in a manner that is analogous to the "ping" program. The ping program requires the name or numeric address of a remote computer. *Computer Networks and Internets*, second edition, pages 11-33. In other words, a particular computer is "pinged." *Id.* Thus, it stands to reason that a test packet used in Kenner's testing process is sent to a particular remote SRU. Therefore, a particular test packet is not distributed to a plurality of receivers. Also, as explained above, information about the transmission of Kenner's test packet is only obtained upon completion of a round trip, if the round trip is completed. Thus, Kenner's testing would not allow receiving information about the transmission of

the test packet at any time after the test packet is sent. Because Kenner does not disclose all of the limitations of amended claim 26 and claims dependent thereon, Kenner is not believed to anticipate these claims.

Under an analysis similar to those presented above (claim 16 and/or claim 26), claim 36 and claims dependent thereon are also believed to be patentable over Kenner.

### ***102 rejections—dependent claims***

Dependent claim 17 was rejected as being anticipated by Kenner based on the principle of inherency. To establish inherency, it must be clear that the missing descriptive matter is necessarily present in the reference. *In re Robertson*, 169 F.3d 743, 745, 49 U.S.P.Q. 2d 1949 (Fed. Cir. 1999). Inherency cannot be established by mere probabilities or possibilities. *Id.*

Kenner fails to inherently disclose a computer to receive web content transmissions and accompanying television broadcasts from a content provider. Merely mentioning “web content” and “video-on-demand” in the background section of Kenner’s disclosure does not mean that Kenner necessarily receives the web content and accompanying video-on-demand from a content provider. For example, Kenner discusses web content in the context of web site overloaded. In a subsequent paragraph, Kenner discusses the video-on-demand. In particular, video-on-demand systems are *not* designed to store text and video, or audio visual data across multiple computer systems in a distributed network. *See* column 2, lines 64 through column 3, line 1. Thus, the references to Kenner relied on in the Office action fail to support the assertion of inherency. Further, the examiner uses permissive language in the rejections – “can be”, which implies a possibility that a thing can be done. But, a mere possibility is not good enough to establish inherency; the thing must be done. Therefore, it is respectfully submitted that Kenner does not anticipate dependent claim 17. Under a similar analysis, Kenner fails to anticipate dependent claim 28.

Kenner also does not anticipate claim 18. For example, with respect to claim 16, the examiner asserts that the first marker is the data in a test packet that is tracked, *i.e.*, using an analogous “ping” command. But, claim 18 calls for a computer to receive a web content broadcast with the first marker inserted within the broadcast data. Because the ping command is directed toward a specific web site, the test packet is not a broadcast as would be understood by one with skill in the art. As such, it is respectfully submitted that Kenner does not anticipate claim 18. Under a similar analysis, Kenner does not anticipate claims 29-30.

### ***103 rejections***

Claim 12 was rejected as being obvious over Mao in view of Kapoor. Claim 12 has been amended to recite an encoder that combines different transmissions to distribute to a plurality of receivers, a device that sets a first marker in the transmission, and a counter that tracks the transmission from the time the first marker is enabled for tracking.

Claim 12 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Mao in view of Kapoor. In the Office action, Kapoor is relied on as teaching setting a first marker and a counter for tracking a transmission. Kapoor sets a congestion indicator bit in a data packet as it passes through a particular node. Column 4, lines 52-55. However, it is not until the data packet is received at a different node that a counter is incremented. *See* column 5, lines 45-53. In other words, the counter of Kapoor counts the delivered packet *after* it is received by node other than the node that set the bit. Thus, there is a delay between setting the bit and counting the data packet in which the bit is set. As such, it is respectfully submitted that claim 12 is not obvious over Mao in view of Kapoor.

### **Conclusion**

In view of the amendments and remarks herein, the application is believed to be in condition for allowance. The examiner’s action in accordance therewith is respectfully requested.

The commissioner is authorized to charge any additional fees or credit any overpayment to Deposit Account No. 20-1504 (ITL.0083US).

Respectfully submitted,

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